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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**

**UNITED STATES OF AMERICA,**

**No. CR. 09 - 68 (KI)**

**v.**

**GOVERNMENT'S SENTENCING  
MEMORANDUM**

**KAMAU HERNDON,**

**(Hearing: January 26, 2010 at 9:30 AM)**

**Defendant.**

The United States of America, by and through undersigned counsel, hereby submits this memorandum in support of the final presentence report (PSR), issued on January 5, 2010.

**I.     Sentencing**

Defendant pled guilty to one count of aggravated identity theft, pursuant to 18 U.S.C. § 1028A. Under the statute and sentencing guideline § 2B1.6, defendant must serve 24 months regardless of the loss amount. The PSR (page 1) recommends a two year sentence, and the government concurs.

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## II. Restitution

The subject of restitution has generated a considerable amount of controversy in this matter, and has caused both probation and the government to expend substantial effort to attempt to ascertain which entity, if any, is the true victim of the mortgage loss associated with the property transaction subject to the entry of plea in this matter. (See PSR paragraphs 17-20 describing the property transaction related to 8307 Sierra Drive, Edmonds, Washington.) To be sure, as described in PSR paragraph 20, there appears to be a loss to some lender of at least \$130,000. The problem here is that none of the involved lending institutions, including Deutsche Bank Trust America and Homecomings Financial (now GMAC Mortgage), has adequately documented which entity is the true victim of this mortgage fraud. The government's efforts to ascertain the actual victim is best reflected in the email from IRS-CI Special Agent Abraham Smith to Tim Lindquist and Jose Aguilar, which is the final attachment to the January 5, 2010 PSR. In a nutshell, it appears to the government and probation that the original loan issued by Homecomings Financial was purchased by Deutsche Bank, securitized with other mortgages and resold, while Homecomings Financial continued to service the loan. The government has been unable to obtain actual documentation that would prove which lending institution actually experienced the loan loss. Indeed, as reflected in an earlier memorandum by IRS-CI Special Agent Abraham Smith dated November 9, 2009, and which is also attached to the final PSR, the government, based on representations by the lending initiations, initially concluded that Homecomings Financial had suffered a loss of \$166,159.20. But the documents supporting that

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conclusion did not adequately explain the significance and relevance of the fact that Deutsche Bank, rather than Homecomings Financial, was the entity that had securitized, repackaged and sold the loan.

In short, based upon the arguments and questions raised by defense counsel regarding the way in which this loan was repackaged and split between servicing, securitization and subsequent sale, there appears to be no clear answer as to which entity actually lost money. The government respectfully submits that it, along with probation, has done all that it is statutorily obligated to do to assist alleged bank victims regarding the documentation of loss related to this mortgage fraud for purposes of restitution. Unless and until these banks document the actual lending victim, the government cannot request restitution.

If between the time of the filing of this Sentencing Memorandum and sentencing Homecomings Financial or Deutsche Bank can adequately document how one or the other of these entities experienced the loss, the government may submit a supplemental memorandum regarding restitution. As of this date, the government respectfully submits that no restitution should be ordered.

Dated this 8<sup>th</sup> day of January 2010.

Respectfully submitted,

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s/ Allan M. Garten  
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